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FEB 22 '90
City Manager's Office

MEMORANDUM
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To: Honorable Mayor and Council Members
From: Bob McNatt, City Attorney
Date: February 21, 1990
Subj: Home Occupation Permit For Nail Salon

At the February 7, 1990 Council meeting, a question was raised by Penny Gamaza regarding Home Occupation Permits for nail salons. Specifically, Ms. Gamaza is in the process of purchasing a residence at 10 N. Central Street where she would like to operate a nail salon (doing artificial nails).

However, she and the real estate broker with whom she has been working have been informed by Community Development Director Jim Schroeder that it is **his** position that the nail salon is synonymous with a beauty parlor, and **so** is ineligible for a Home Occupation Permit under Municipal Code Section 17.03.290. This section specifically excludes from home occupations "clinics, hospitals, barber **shops**, beauty parlors, real estate offices, and animal hospitals."

At Council direction, I have looked into the matter and although I am sympathetic with Ms. Gamaza's situation, I am forced to agree with Mr. Schroeder.

In analyzing the situation, I noted Business and Professions Code §7321(e) which includes manicuring or doing nails in the definition of "cosmetology." Ms. Gamaza is licensed by the State as a manicurist.

Further, Business and Professions Code §7380 defines a "cosmetology establishment" as any premises where "... any branch of cosmetology ... is practiced (including apparently, manicuring as discussed in the previous Business and Professions section) except for "manicuring as done in barber **shops** ..." The most reasonable interpretation of this section I can draw is that any premises where manicuring is legally done is either a "cosmetology establishment" (which appears to be synonymous with "beauty parlor") or a "barber shop." Both barber shops and beauty parlors are excluded uses for Home Occupation Permits under Municipal Code Section 17.03.290.

Of course, this is my opinion only. No case law was found which might help us handle the situation. The Council could choose to disagree and simply declare that in its opinion, nail salons are not "beauty parlors." However, that could set a **bad** precedent if the Ordinance was viewed as being subject to interpretation on a case-by-case basis without specific guidelines or stated criteria to **be** used in all other cases. Ordinances which are so loosely drafted or applied as to leave unlimited discretion to grant or deny permits are frequently overturned.

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Although this case may be meritorious, we would be obligated to treat all other applicants the same, which might be less desirable in future situations.

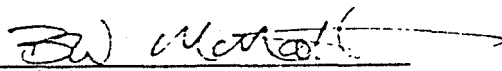
As an aside, I have been told that by way of precedent, at least one other Home Occupation Permit for a nail salon exists, but a check of our records fails to confirm that.

There are three options as I presently see them:

- 1) The Council can, as previously mentioned, simply declare that its interpretation of "beauty parlor" does not include nail salons. For reasons discussed above, neither I nor Jim Schroeder can recommend that approach.
- 2) The Council can modify the Home Occupation Permit Ordinance to more clearly describe uses and businesses allowed and/or prohibited under Home Occupation Permits. Assuming Council directs staff to prepare an amended ordinance, that would require at least 2 months to become effective, assuming the Council voted to adopt the amended ordinance. Ms. Gamaza told me that she was not in favor of modifying the Ordinance to allow nail salons generally, because it could allow others to run larger operations serving more patron; from residences, with harmful results to her business.
- 3) It is at least theoretically possible to rezone the property to such designation as commercial-residential (C-R) which would allow the intended use. However, since this property is located in the east side downzoning area, this does not appear practical nor feasible.

Of these options, modification of the Ordinance seems most practical to me. Although this would require some weeks to complete, it could handle this situation and also allow the City to specify by ordinance, certain requirements now only treated as policy, as shown on the face of the Home Occupation Permit itself (attached).

I have spoken with Ms. Gamaza, who did not seem to favor any of the specified options.


Bob McNatt
City Attorney

attachment

cc: Community Development Director

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HOMOCCPR/TXTA.01V



COMMUNITY DEVELOPMENT
DEPARTMENT

HOME OCCUPATION
PERMIT

NAME OF APPLICANT: _____ PHONE NUMBER: _____
STREET ADDRESS: _____ ZONING: ()R ()P-D
BUSINESS NAME: _____
DESCRIPTION OF BUSINESS: _____
BUSINESS USE OF ADDRESS: ()OFFICE ONLY ()OTHER, DESCRIBE _____
ESTIMATED NUMBER OF VISITORS PER WEEK: _____
BUSINESS WILL BE ()PART-TIME ()FULL-TIME
APPLICANT IS: ()OWNER ()RENTER OF ABOVE LISTED PROPERTY.

IF APPLICANT IS RENTER, THE FOLLOWING "CONSENT OF OWNER" MUST BE SIGNED BY OWNER:

I, _____, owner of the above listed property, have familiarized myself with the above application and do hereby give my consent to the applicant for a Home Occupation Permit at this address.

SIGNED: _____ PHONE: _____ DATE: _____

I, the undersigned, agree to the following conditions for Home Occupation Permits. The proposed home occupation will:

1. not be noticeable from the exterior of the dwelling unit;
2. not be carried out by persons other than those residing at this address;
3. be clearly incidental to the use of the dwelling for residential purposes and will not change the residential character of the dwelling or neighborhood;
4. not have any display or inventory of commodities on the premises;
5. not substantially increase the vehicular traffic in the immediate area of the dwelling;
6. not involve the use of more than one room in the dwelling;
7. not involve the use of power-driven equipment having a motor or motors of more than 1/2 horsepower;
8. not list the address of the home occupation in any advertisements;
9. not use signs except an unlit and building-mounted nameplate not more than two square feet in area identifying the name and home occupation;
10. not create a nuisance by reason of noise, odor, dust, vibration, fumes, smoke, electrical interference, increased traffic, or other causes;
11. not involve the parking of more than one vehicle used for the home occupation and personal use (no heavy-duty commercial vehicles allowed);
12. be the only home occupation run out of the above address; and
13. _____

I also understand that the home occupation is subject to review by City staff and may be revoked at any time upon violation of any of the above stated conditions.

SIGNED: _____ DATE: _____

DATE ISSUED:

HOME OCCUPATION PERMIT NUMBER: 90

APPROVED BY:

BUSINESS LICENSE NUMBER: